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E.O. 12958: N/A
TAGS: PARM MARR PREL UK AS
SUBJECT: Q&A ON NEW DOD CLUSTER MUNITIONS POLICY

REF: A. LONDON 1833 (NOTAL)
1B. HANLON-BAKER E-MAIL (7/11/2008)
1C. STATE 73257

11. In response to queries from the United Kingdom's Foreign Commonwealth Office and Australia's Department of Foreign Affairs and Trade (refs A & B) with regard to the new cluster munitions policy announced by the United States (ref C), Embassies London and Canberra are requested to utilize the following guidance, as appropriate. Mission Geneva also may draw on the guidance with other delegations, as appropriate.

Q1. How does DoD define cluster munitions?

The U.S. Government (USG) utilizes a broad, generic definition of cluster munitions. A cluster munition is defined as a munition that is designed to disperse or release explosive submunitions, and includes those explosive submunitions. The United States would consider the German-made SMArt 155 a cluster munition. (The SMArt 155 is not considered a cluster munition per the definition in the Dublin Agreement.)

Q2. What is the reason for the 10 year transition period?

The implementation of this policy will be a major undertaking for the USG. Cluster munitions provide important military capabilities that cannot be relinquished until suitable replacements are available. It will take a number of years to develop and procure replacements for the existing cluster munitions that do not meet the requirements of the new policy.

Q3. Who will verify the 1% unexploded ordnance (UXO) rate for future munitions?

Each Service that uses cluster munitions will be responsible for verifying its forces meet the 1% UXO criteria. This includes evaluation of the UXO rate after use in & facts on the ground circumstances. They will be required to establish a mechanism by which to assess whether their cluster munitions are meeting the rate, and take remedial action if they are not. Through 2018, Combatant Commanders are the approval authority for use of any cluster munitions that exceed the 1% UXO rate.

Q4. Will the new policy be retroactive to weapons already sold to other countries?

No. The policy on transfers applies to this point forward. Any cluster munitions transferred before June 19, 2008, would be subject to the agreements that were made at the time of the transfer.

Q5. How many submunitions will replacement cluster munitions contain?

The policy does not mandate specific requirements beyond the standard itself. The number of submunitions will be determined by the requirement of the Service that is designing the munition.

Q6. Does the 2018 deadline raise the possibility of a U.S. &dump8 of existing stock on non-signatories to the &Oslo treaty8?

All existing legislative and regulatory restrictions for the transfer of cluster munitions will be applied. The policy does not supersede these, but requires that nations receiving cluster munitions not meeting the 1% UXO standard and transferred on or after June 19, 2008, agree to not employ them after 2018.

Q7. The new policy seems to give recipients of transfers of old cluster munitions free reign to use them until 2018. Does the USG currently have restrictions on use of these weapons in transfers/sales agreements?

It is part of our export control practice to have end-user certification and agreements. The nature and content of these are often classified between the United States and the recipient government.

Q8. Are there re-export restrictions built into cluster munitions sales and transfer agreements with non-signatories to the Dublin Treaty?

U.S. legislation for fiscal year 2008 foreign operation appropriations restricts the transfer or sale of cluster munitions to those meeting the 1% UXO standard. This same legislation also requires transferees to agree that they will only use the received cluster munitions against clearly defined military targets and not where civilians are known to be present. Under U.S. laws and regulations regulating the defense trade, no re-exports of cluster munitions are allowable unless explicitly authorized by the Department of State.

¶2. Please contact PM/WRA officers Mike Williams (williamsme@state.gov) or Katherine Baker (bakerkm@state.gov) for more information or assistance on this issue.

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